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**WJB-TV FT. PIERCE LIMITED PARTNERSHIP**

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April 19, 1993

VIA FEDERAL EXPRESS

Ms. Donna R. Searcy, Secretary  
Federal Communications Commission  
1919 M Street, NW  
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

RE: MM Docket No: 93-24 ✓

Dear Ms. Searcy:

Enclosed for filing is a copy of the Comments of WJB-TV Limited Partnership to the Notice of Proposed Rulemaking in response to MM Docket No. 93-24. The original and nine copies are being forwarded to you by overnight delivery.

Please acknowledge your receipt of this letter by file-stamping the enclosed copy of this letter and returning it to me in the enclosed self-addressed, stamped envelope.

If you have any questions or need additional information, please advise.

Very truly yours,

WJB-TV Limited Partnership

BY:

*Kenneth E. Hall*

Kenneth E. Hall  
General Manager

KEH/jpd  
Enclosures

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**Before the**  
**FEDERAL COMMUNICATIONS COMMISSION**

**Washington, DC 20554**

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**APR 20 1993**

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

**In re:**

**Amendment of Part 74 of the  
Commission's Rules with Regard  
to the Instructional Television  
Fixed Service**

**MM Docket No. 93-24**

**COMMENTS OF WJB-TV LIMITED PARTNERSHIP**

WJB-TV Limited Partnership ("WJB") submits these initial comments in response to the Notice of Proposed Rulemaking in MM Docket No. 93-21 (the "Notice"). This docket proposes to modify certain of the procedural rules regarding the processing of applications for stations in the Instructional Television Fixed Service ("ITFS").

WJB is the general partner of the operator of a wireless cable television system in Ft. Pierce, Florida and the developer of a similar system in Melbourne, Florida.<sup>1</sup> The Ft. Pierce system currently has over five thousand subscribers, despite being in business for less than a year. The Melbourne system is expected to begin operations later this year. In addition, WJB and its affiliates are actively investigating several other opportunities in the wireless cable business.

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<sup>1</sup> The WJB entities do business under the name "Coastal Wireless Cable Television" pursuant to a Certificate of Assumed Name filed with the Florida Secretary of State.

## **Background**

There is no denying that the popularity of wireless cable television has mushroomed in recent years. In fact, dozens of wireless systems are now up and operating, including WTR's system

construction grants, continuing royalty payments, and operational and technical assistance. In fact, many educators simply could not afford to construct and operate their ITFS systems without the assistance of wireless operators.

#### WJB's experience with ITFS

To date, WJB has entered into contracts to lease excess channel capacity on a total of forty ITFS channels. Its lessors include a variety of educators, including a state university, community colleges, a school district, and several private schools. These arrangements have created partnerships that have benefitted both students and subscribers.

WJB's contract with the School Board of St. Lucie County provides an example of the benefits that can arise from such an arrangement. The School Board serves thousands of public school students from kindergarten level through high school. Like most school systems in Florida, it does not receive all of the funding as would be ideal.

WJB paid for the construction of the School Board's two ITFS stations. It also pays a continuing monthly royalty for the part-time use of the channels. It also provides antennas to the district's homebound students to allow them to receive the programming. The School Board uses the channels to transmit programming to a total of twenty of its schools. It also is able to produce its own programming; for example, in a recent three month period, the school system produced a total of 29 different

programs using royalties paid by WJB. Finally, it is able to offer after-school programming which is written, directed, and produced by students; one of these shows, which is entitled "Homework Hotline," allows students to telephone specific questions regarding their homework and studies to a panel of teachers, who answer the questions over the air for the benefits of all viewers.

WJB. as a developer of a wireless cable systems and a

freeze is lifted, some educators will likely find themselves having to fund the construction and operation of their stations themselves.

The freeze will also have a trickle-down effect on unbuilt authorizations. Wireless operators who have not assembled sufficient capacity in a particular market will be hesitant to expend any construction funds on authorized stations until the freeze is lifted and additional channels are made available. In all likelihood, some authorizations that would have built will simply lapse. Again, the losers will be the educators.

The freeze is a serious concern because of the uncertainty surrounding its length. The Notice refers to a "short" freeze. See Paragraph 9 of the Notice. Unfortunately, it appears that this process may not prove to be a "short" one; paragraph one of the Notice indicates that it will extend "during the pendency of this proposed rulemaking." See Paragraph 1 of the Notice. Reply Comments are due in middle of May, and an Order will presumably be released several weeks afterward. Once the procedural issues are resolved, the Commission intends to give "no fewer than 60 days or some longer period" before opening the first filing window. All in all, it appears possible that new and outstanding ITFS applications will not be processed before sometime in 1994.

From the standpoint of wireless cable operators, this scenario poses a serious problem. Those operators who have expended hundreds of thousands of dollars but whose lessors have not yet filed applications for a sufficient number of channels (or

whose applications are not yet on a cut-off list) must sit idly for several months. Successful operators who desire to develop additional markets (such as WJB) are similarly stranded. Consequently, the enthusiasm for developing wireless cable systems, as well as the necessary capital, are likely to be directed elsewhere. In short, the freeze could result in a serious blow to the development of the entire wireless cable industry.

More importantly to this proceeding, it is critical to realize that these negative effects will extend to the educational community. Over and over again, WJB's ITFS lessors have cited tight budgets and funding cutbacks as creating an immediate need for ITFS capacity. In many cases, these stations allow instructors to simultaneously reach additional students and remote campuses, all at a reasonable cost. Best of all, the enormous cost of constructing and operating these stations is virtually always borne by the wireless system.

To the extent that the freeze discourages wireless investment and development, it will adversely affect the many educators who depend on wireless operators. In other words, these educators, whose budgets are tighter than ever, may now have to pay for their ITFS stations themselves.

#### B. Processing of Applications

WJB understands the difficulties that have resulted to the Commission staff from having to process hundreds of

applications. Undoubtedly, this is a difficult and thankless task.

It is ironic that the problem arises in large part because of the success of ITFS and the benefits that have arisen through commercial partnerships. The Commission should not lose sight of this important point. Regardless of what actions are ultimately taken to deal with the backlog, there is no denying the tremendous benefits that have resulted to all parties from ITFS leasing arrangements. The Commission should be careful not to disrupt the operation of these arrangements.

WJB believes that the real problem lies not in the rules themselves, but in the ability of a few commercial entities to abuse the filing process. Specifically, it is well-known that some groups have been using the application process in order to warehouse spectrum that they will probably never utilize, and in most cases, never intended to utilize. By filing applications in dozens, perhaps hundreds, of markets, they have established a bargaining position in the development of numerous wireless cable systems nationwide. Ultimately, the legitimate developer of those systems must deal with these entities to assemble the necessary number of channels.

Additionally, the problem has been compounded because too often these parties file radical modifications or amendments to their applications, sometimes without the consent or knowledge of the underlying applicant. In the past, for example, modifications have been filed to add and delete dozens of receive sites at one time, often creating or expanding interference problems with other



applicants. The result is typically a slew of petitions to deny and a comparative evaluation of mutually-exclusive applications, all of which ultimately exhaust the Commission's limited time and resources.

This situation creates a score of problems to educational entities that legitimately desire the use of ITFS channels. First, for those entities who contract with the warehouseurs, they often find - after a considerable delay - that their lessee lacks both the resources and the inclination to construct their station. Second, and often more serious, because the warehouseurs often enlist dubious entities to apply for the stations, legitimate educators sometimes find that their applications are mutually-exclusive and, at best, cannot be granted except after a considerable delay. Finally, when huge amounts of the Commission's resources are wasted by the antics of the warehouseurs, the processing of legitimate applications is inevitably slowed.

WJB believes that the solution to the backlog problem is not to discourage applications, but to deter the activities of those who repeatedly abuse the process. In the past, the Commission has returned deficient applicants and forfeited unbuilt authorizations involving these groups; unfortunately, the application itself, as well as the unbuilt authorization, possesses a "nuisance value" in that it prevents a legitimate applicant from obtaining the use of the spectrum until the return or forfeiture occurs. Furthermore, the mere review and return of such applications wastes the Commission's time and resources. Thus, to

effectively deal with the underlying problem, it is critical that such filings be discouraged altogether.

To deal with the problem, WJB proposes that the Commission strengthen the rules requiring that filers (and their sponsors) demonstrate their financial ability and wherewithal to construct the applied-for stations. Currently, the Commission requires applicants to certify that they have "reasonable assurance" of commitments from donors and that the donors have "sufficient net liquid assets." See Question 2, Part III of FCC Form 330. Unfortunately, this requirement places the burden on the applicant, who presumably would not have entered into an excess capacity lease agreement had he not believed in the credit-worthiness and character of his sponsor.

Instead, WJB proposes that applicants (or their sponsors) be required to submit actual proof of their financial ability to construct the underlying station. This could include a letter of credit, a trust account established for the purpose of construction, or in the case of state institutions, proof that funds have been allocated by the appropriate government body. In other words, the applicant should have to prove its ability to construct the station before its application is processed.

WJB further submits that separate proof should be required for each applied-for station. For example, if an applicant seeks authority to build two stations, it should be required to prove its ability to finance both stations. Likewise, if a commercial entity sponsors five ITFS applications, it should

be required to post five separate letters of credit. This requirement would eliminate one alleged abuse in the industry, namely that of one or more entities who have sponsored scores of applications, but who have the ability and intent to construct only a few, if any, of the underlying stations.

C. Use of Filing Windows

WJB commends the Commission for seeking to "control the flow of applications better, thereby significantly improving processing efficiency." See Paragraph 7 of the Notice. However, it questions whether the use of filing windows will accomplish this objective. More importantly, it fears that the use of filing windows will adversely affect many of the educational entities who would otherwise benefit from ITFS installations.

Unfortunately, it is difficult to comment on the filing window concept, as the Notice gives few details of how the process would work. WJB assumes that whenever a given window is opened, all applications received during the period of the window will be processed at once. If more than one applicant applies for the same channels in the same market during the same window, a comparative analysis would be conducted. Alternatively, the Commission may be planning to assign certain markets to specific windows. Presumably, with the intention of benefitting the most potential users while controlling the quantity of applications, the first window would include a handful of the largest markets; smaller markets would be included in subsequent windows, some of which may

not be opened for several years. WJB believes that either of these approaches will result in adverse consequences to many ITFS hopefuls, as well as the Commission.

If the former approach is adopted, WJB believes that it will result in an even greater abuse of the following process. When the first filing window approaches, legitimate operators such as WJB will face a critical choice - either they pound the pavement to find applicants for every channel group in every market that they wish to develop or they risk the possibility that a warehouser could sponsor an application on one of these groups and then use the channels to extract a payment. Thus, prudent operators - as well as educators - would be motivated to file in the initial window, a situation that could lead to a slew of hastily-prepared applications.

If the latter approach is adopted, WJB believes that the Commission needs to develop a mechanism of identifying those markets that should be included in the initial windows. For

alone that are larger. Had its ITFS channels been allocated through a filing window under this approach, that window probably would still be several years away. However, because local educators, such as the school board and the community college